

EXHIBIT B

Part 1 of 2

DEFENDANTS' SYNOPSIS OF THE DEPOSITION TESTIMONY OF AHN GATES

Although Ms. Gates submitted a declaration in support of Bank of America's motion for a preliminary injunction attaching various iterations of the Apollo Contract and stating that "extensive" negotiations had taken place over the term of the Contract (*see* Dkt. # 23 at ¶¶ 5, 7, 11), Ms. Gates' declaration omitted to disclose that she has no independent recollection of anything related to the Agreement. (Gates Tr. at 14:14-25:12). She confirmed in her deposition that "all [she] can recall at this point is the actual language of the contract" (Gates Tr. at 18:13-18:16), and that she "could not give . . . specifics around intent" of the clauses in the Agreement even though she negotiated it for B of A (*id.* at 17:24-18:5). For example, she did not even recall negotiating the term related to "170,000 web hits per month" or the intent of that provision. (*Id.* at 22:5-22:19; 56:22-57:15). Ms. Gates testified that Julie Gonzalez negotiated the pricing terms of the Agreement but stated that she had not spoken to Ms. Gonzalez since August 2009. (*Id.* at 29:24-31:19)

Ms. Gates admitted in her deposition, that B of A usually negotiates "perpetual" contracts. (Gates Tr. at 48:2-51:19). Initially, B of A proposed a perpetual contract to Apollo. (Gates Tr. at 59:25-62:24). However, the parties negotiated a change to that language to make the contract one for two years with annual renewal periods. (Exh. 1 ¶ 6).

Ms. Gates testified that B of A estimated that it would save over \$12 million by transitioning from its previous vendor, Transunion, to Apollo. (Gates Tr. at 84:12-91:23).

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5 BANK OF AMERICA, N.A.,

6 Plaintiff,

7 -against-

Civil Action No.

10-5707 (DLC)

8
9 APOLLO ENTERPRISE SOLUTIONS, LLC, APOLLO
ENTERPRISE SOLUTIONS, INC. and MORIAH
10 PARTNERS, LLC,

Defendants.

11 - - - - -x

12 31 West 52nd Street
13 New York, New York

14 September 22, 2010
15 10:22 a.m.

16
17 DEPOSITION of ANH GATES, on
18 behalf of the Plaintiff in the
19 above-entitled action, held at the above
20 time and place, taken before Barbara P.
21 Goldsmith, a Notary Public of the State of
22 New York, pursuant to order and
23 stipulations between Counsel.
24
25

1 ANH GATES
2 responsibility for Apollo since that 10:31:38AM
3 time, to your knowledge? 10:31:39AM
4 A. It has -- the relationship 10:31:40AM
5 has been transferred to another 10:31:43AM
6 sourcing manager since Francisco. So 10:31:46AM
7 in the interim he managed the 10:31:48AM
8 relationship for a couple of months 10:31:52AM
9 and then it transferred to someone 10:31:54AM
10 else within the supply chain. 10:31:56AM
11 Q. And who was that? 10:31:58AM
12 A. That was Walter Wolf, 10:31:59AM
13 W-o-l-f. 10:32:03AM
14 Q. Did you have any discussions 10:32:04AM
15 with Mr. Wolf about the Apollo 10:32:05AM
16 relationship or Apollo services? 10:32:10AM
17 A. Walter, upon my return from 10:32:14AM
18 maternity leave in December or 10:32:17AM
19 January, or January, Walter did reach 10:32:19AM
20 out to me regarding the contract, the 10:32:22AM
21 master contract with Apollo. 10:32:26AM
22 Q. What did he reach out -- 10:32:28AM
23 what did he ask you and what did 10:32:31AM
24 you -- what did he tell you or ask you 10:32:34AM
25 and what did you ask him or tell him? 10:32:36AM

1 ANH GATES

2 A. We talked about some clauses 10:32:38AM
3 within the contract and there were 10:32:41AM
4 several and I don't recall 10:32:42AM
5 specifically which ones they were, but 10:32:44AM
6 he did ask me questions about the 10:32:45AM
7 contract and did I remember the intent 10:32:47AM
8 of some of the clauses that were in 10:32:50AM
9 the contract. 10:32:53AM

10 Q. And do you remember what 10:32:53AM
11 clauses he asked you about? 10:32:57AM

12 A. I think the mediation and 10:32:58AM
13 arbitration section, the term of the 10:33:01AM
14 contract, and some schedules. 10:33:05AM

15 Q. Anything else? 10:33:19AM

16 A. I can't remember if there 10:33:19AM
17 was anything else. There could have 10:33:21AM
18 been, but I just don't remember. 10:33:22AM

19 Q. What did he ask you about 10:33:23AM
20 the mediation and arbitration 10:33:24AM
21 provisions? 10:33:26AM

22 A. He asked me if it was our 10:33:27AM
23 standard clause. 10:33:31AM

24 Q. And what did you tell him? 10:33:33AM

25 A. I told him I don't remember. 10:33:35AM

1 ANH GATES

2 I'll have to go back and look at the 10:33:37AM

3 red lines or we do a compare to our 10:33:41AM

4 standard versions to see what changes 10:33:44AM

5 were made. 10:33:46AM

6 Q. Did you? 10:33:46AM

7 A. I didn't. 10:33:46AM

8 Q. And what did he ask you 10:33:47AM

9 about the term of the contract? 10:33:49AM

10 A. There was a termination 10:33:50AM

11 clause in the contract and he had 10:33:53AM

12 asked me about the formula for 10:33:55AM

13 calculating any termination penalties 10:33:59AM

14 and how we arrived at that formula. 10:34:02AM

15 Q. And is that all you recall 10:34:04AM

16 him asking you about the termination 10:34:06AM

17 clause? 10:34:09AM

18 A. He might have confirmed with 10:34:09AM

19 me also that just to -- he wanted my 10:34:11AM

20 confirmation of the initial term of 10:34:16AM

21 the agreement. 10:34:18AM

22 Q. And what did you tell him 10:34:18AM

23 about both of those items, both the 10:34:20AM

24 termination penalty or amount and the 10:34:22AM

25 intent about the term of the 10:34:27AM

1 ANH GATES
2 agreement? 10:34:29AM
3 A. In terms of the penalty 10:34:30AM
4 clause, I told him I didn't remember 10:34:31AM
5 how we came to the exact formula 10:34:33AM
6 that's in the contract right now. 10:34:36AM
7 Q. Okay. 10:34:38AM
8 A. And in terms of the initial 10:34:39AM
9 term of the contract, I didn't recall 10:34:41AM
10 off the top of my head. So I had to 10:34:43AM
11 refer back to the agreement itself, 10:34:45AM
12 look on the cover page to see when the 10:34:48AM
13 effective date of the agreement was 10:34:50AM
14 and then the termination date or the 10:34:52AM
15 expiration date. 10:34:55AM
16 Q. So when he asked you these 10:34:56AM
17 questions, you didn't recall 10:34:58AM
18 independently anything about the term 10:34:59AM
19 of the contract, you had to look at 10:35:01AM
20 the contract itself? 10:35:03AM
21 A. I did, yes. 10:35:04AM
22 Q. And did the contract itself 10:35:05AM
23 refresh your recollection in any way? 10:35:08AM
24 A. No. I was familiar with 10:35:11AM
25 Apollo and I knew that I had 10:35:15AM

1 ANH GATES
2 negotiated the contract, but I did 10:35:17AM
3 not -- I could not give him specifics 10:35:18AM
4 around intent of some of those clauses 10:35:21AM
5 that we had talked about. 10:35:25AM
6 Q. And is that still true 10:35:26AM
7 today, that you cannot give us 10:35:28AM
8 specifics about intent of the clauses 10:35:30AM
9 you talked about? 10:35:31AM
10 A. Yes. 10:35:32AM
11 Q. Okay. Now, you also said 10:35:32AM
12 that -- well, let me stay there. 10:35:38AM
13 So really all you can recall 10:35:44AM
14 at this point is the actual language 10:35:47AM
15 of the contract; is that fair to say? 10:35:49AM
16 A. Yes. 10:35:51AM
17 Q. Now, you also said that 10:35:51AM
18 there was some question about 10:35:53AM
19 schedules. Do you remember what 10:35:55AM
20 schedules he asked you about? 10:35:56AM
21 A. We talked about various 10:35:58AM
22 schedules because there are a number 10:36:03AM
23 of them underneath the master 10:36:04AM
24 agreement. So we did talk through, 10:36:07AM
25 and I forget what schedule, A, B, C, 10:36:10AM

1 ANH GATES

2 D, E, F, G. I don't know what 10:36:16AM

3 schedule it is without looking at the 10:36:16AM

4 agreement. But we did talk at a high 10:36:18AM

5 level about the fees. We talked 10:36:21AM

6 about -- without looking at the 10:36:32AM

7 contract, I can't remember what other 10:36:33AM

8 schedules we talked. We may have 10:36:35AM

9 talked about the service levels, which 10:36:38AM

10 is another schedule underneath the 10:36:41AM

11 master. We might have talked about 10:36:42AM

12 the business continuity schedule, sort 10:36:50AM

13 of like a recovery schedule underneath 10:36:56AM

14 the master. But I can't recall 10:36:59AM

15 specifically. 10:37:03AM

16 Q. So this is not meant to be a 10:37:03AM

17 guessing game. 10:37:13AM

18 MR. WHATLEY: Could we mark 10:37:16AM

19 this as Exhibit 1. 10:37:18AM

20 Q. Ms. Gates, here is an 10:37:20AM

21 exhibit that we are marking as Exhibit 10:37:22AM

22 1.

23 MR. WHATLEY: Since it's 10:37:25AM

24 always nice to get rid of papers, 10:37:26AM

25 Richard, you get copies, too. I 10:37:29AM

1 ANH GATES

2 apologize for not having one for 10:37:31AM
3 you.

4 (Application service
5 provider agreement was hereby
6 marked as Defendant's Exhibit 1
7 for identification, as of this
8 date.) 10:38:05AM

9 Q. Ms. Gates, I have put before 10:38:05AM
10 you a copy of Exhibit 1 to your 10:38:07AM
11 deposition. Is this a copy of the 10:38:09AM
12 contract? 10:38:11AM

13 A. Yes, it is. 10:38:11AM

14 Q. And can you use that 10:38:12AM
15 document to refresh your recollection 10:38:15AM
16 in terms of what schedules you 10:38:17AM
17 discussed? 10:38:19AM

18 A. I can try. 10:38:20AM

19 Q. Fair enough? 10:38:22AM

20 A. Is that a fair statement? 10:38:23AM

21 Q. That's all we can ask. 10:38:25AM

22 MS. MORRIS: You can start 10:38:32AM
23 looking at the schedules. 10:38:32AM

24 A. We did talk at a high level 10:38:33AM
25 about Schedule A and I had to look at 10:38:36AM

1 ANH GATES

2 it just to refresh my memory of what 10:38:39AM
3 products and services were being 10:38:45AM
4 purchased by Apollo. 10:38:47AM

5 Q. And do you remember what you 10:38:48AM
6 talked about other than it being at a 10:38:49AM
7 high level with respect to Schedule A? 10:38:51AM

8 A. The name of the application 10:38:53AM
9 itself because I really had forgotten 10:38:55AM
10 what hosting services Apollo provided 10:38:58AM
11 for the bank. We talked about -- I 10:39:00AM
12 did, during our conversation, I don't 10:39:11AM
13 think he asked about it, but I did 10:39:12AM
14 review the Bank of America 10:39:14AM
15 responsibilities, Schedule B. 10:39:16AM

16 Q. But he didn't ask about 10:39:17AM
17 those? 10:39:19AM

18 A. He did not ask. 10:39:19AM

19 Q. Okay. 10:39:20AM

20 A. We talked about Schedule C 10:39:21AM
21 because he asked me questions about 10:39:24AM
22 the pricing. 10:39:26AM

23 Q. What did he ask you and what 10:39:26AM
24 did you tell him? 10:39:29AM

25 A. He did ask me about Section 10:39:30AM

1	ANH GATES	
2	1, what he -- I'm sorry -- what was	10:39:40AM
3	requested?	10:39:43AM
4	Q. What did he ask you?	10:39:44AM
5	A. He asked me did I recall	10:39:45AM
6	negotiating the 170,000 web hits per	10:39:47AM
7	month.	10:39:53AM
8	Q. Did you?	10:39:53AM
9	A. I do not recall.	10:39:54AM
10	Q. Okay.	10:39:56AM
11	A. I didn't even -- yeah, I had	10:39:57AM
12	forgotten what that meant because he	10:39:59AM
13	wanted to know what was the intent of	10:40:03AM
14	web hits and I didn't remember.	10:40:06AM
15	Q. Okay.	10:40:10AM
16	A. He also --	10:40:11AM
17	Q. By the way, do you remember	10:40:12AM
18	today?	10:40:13AM
19	A. I don't.	10:40:13AM
20	Q. Okay. Keep going. I'm	10:40:14AM
21	sorry.	10:40:15AM
22	A. He also talked about the	10:40:15AM
23	monthly hosting and monthly	10:40:19AM
24	maintenance cost and how we derived	10:40:21AM
25	those costs. He asked me about the	10:40:23AM

1 ANH GATES
2 tiered pricing below and what that 10:40:27AM
3 meant. And I told him I remember that 10:40:29AM
4 there were certain modules of the 10:40:35AM
5 Apollo application that were presented 10:40:38AM
6 to us and we wanted to lock down 10:40:40AM
7 pricing for all of those modules, but 10:40:43AM
8 I didn't know what these volumes meant 10:40:46AM
9 or what this tier pricing on the 10:40:51AM
10 bottom of page 33 really meant. 10:40:54AM
11 Q. And by the way, you're 10:40:58AM
12 now -- in the answers you're giving is 10:40:59AM
13 Schedule C of page 33 of the contract, 10:41:02AM
14 correct? 10:41:06AM
15 A. Yes. 10:41:06AM
16 Q. Do you recall him asking 10:41:06AM
17 anything else about Schedule C? 10:41:08AM
18 A. No. 10:41:09AM
19 Q. Were there any other 10:41:10AM
20 questions or was there any other 10:41:13AM
21 discussion that you had with Mr. Wolf 10:41:15AM
22 about this matter? 10:41:17AM
23 A. We -- I think we talked 10:41:18AM
24 about Schedule D and the service 10:41:21AM
25 levels because I probably -- not 10:41:23AM

1 ANH GATES

2 probably. I asked him are there any 10:41:25AM
3 performance issues that we're having 10:41:28AM
4 with Apollo and I think we quickly 10:41:30AM
5 looked at Schedule D, but not in 10:41:32AM
6 detail, but I remember reviewing it at 10:41:34AM
7 a high level. 10:41:37AM

8 Q. And by the way, what was his 10:41:37AM
9 response when you asked him was there 10:41:39AM
10 any service or performance issue with 10:41:41AM
11 Apollo? 10:41:43AM

12 A. He said no, there are no 10:41:43AM
13 performance issues, but there are 10:41:45AM
14 other issues right now with Apollo. 10:41:47AM

15 Q. Okay. And is that all you 10:41:49AM
16 recall about your discussion about 10:41:54AM
17 Schedule D? 10:41:55AM

18 A. Yes. 10:41:56AM

19 Q. Okay. 10:42:01AM

20 A. There is a Schedule G 10:42:19AM
21 recovery schedule, and I don't know 10:42:20AM
22 that he asked questions about it, but 10:42:22AM
23 I remember looking at it during our 10:42:26AM
24 conversation and we may have talked 10:42:28AM
25 about it at a high level, but I don't 10:42:31AM

1 ANH GATES
2 recall specifically what I said to him 10:42:34AM
3 or -- and I don't think he asked me 10:42:36AM
4 questions about it, but I do remember 10:42:41AM
5 looking at it during our conversation. 10:42:42AM
6 Q. And do you recall, did you 10:42:44AM
7 have any discussions about H or I? 10:42:47AM
8 A. No. 10:42:52AM
9 Q. And is there anything else 10:42:52AM
10 you recall about that conversation 10:42:54AM
11 with Mr. Wolf? 10:42:55AM
12 A. No. 10:42:56AM
13 Q. When was the next 10:42:58AM
14 conversation you had with anyone about 10:43:00AM
15 Apollo? 10:43:02AM
16 A. Todd Taylor, who is the 10:43:02AM
17 legal counsel for -- that supports 10:43:15AM
18 supply team management, had given me a 10:43:19AM
19 call and asked me -- 10:43:21AM
20 MS. MORRIS: Can I -- can I 10:43:23AM
21 just interrupt because it sounds 10:43:26AM
22 like she's about to go into some 10:43:29AM
23 privileged discussions with 10:43:33AM
24 counsel. You can say that you 10:43:34AM
25 spoke to Mr. Taylor, who's 10:43:35AM

1	ANH GATES	
2	in-house legal counsel at Bank of	10:43:38AM
3	America, but what was said by you	10:43:41AM
4	and what was said by him is	10:43:42AM
5	privileged.	10:43:44AM
6	THE WITNESS: Okay.	10:43:45AM
7	Q. So at some point Mr. Taylor	10:43:47AM
8	called you; is that correct?	10:43:49AM
9	A. Yes.	10:43:50AM
10	Q. And you and Mr. Taylor had a	10:43:50AM
11	discussion?	10:43:53AM
12	A. Yes.	10:43:53AM
13	Q. Do you recall when that was?	10:43:53AM
14	A. I don't.	10:43:55AM
15	Q. Do you recall roughly how	10:43:56AM
16	long after your discussion with	10:44:00AM
17	Mr. Wolf that was?	10:44:02AM
18	A. I don't.	10:44:03AM
19	Q. Did you have any further	10:44:05AM
20	discussions other than your discussion	10:44:11AM
21	with counsel for the bank, Mr. Taylor,	10:44:13AM
22	at some point?	10:44:16AM
23	A. Not that I recall.	10:44:17AM
24	Q. Okay. And did you have any	10:44:24AM
25	further dealings with anyone from	10:44:34AM

1 ANH GATES
2 Carolina graduates and if you would 10:46:26AM
3 please give me a note saying that so I
4 can prove to them that there is one 10:46:30AM
5 person that went to Carolina who will 10:46:32AM
6 say that, I appreciate that. 10:46:34AM
7 And what -- by the way, what 10:46:36AM
8 did you study in graduate school? 10:46:39AM
9 A. Political science. 10:46:41AM
10 Q. And what did you major in in 10:46:42AM
11 college? 10:46:44AM
12 A. My undergrad was political 10:46:45AM
13 science. It was a Bachelor of Arts. 10:46:47AM
14 MR. WHATLEY: Let's mark as 10:46:56AM
15 another exhibit your declaration. 10:46:58AM
16 And it turns out that I don't have 10:47:03AM
17 an extra copy of this. Is that 10:47:10AM
18 all right with you? You'll wind 10:47:14AM
19 up with the original, I suppose. 10:47:15AM
20 (Declaration of Anh Gates
21 was hereby marked as Defendant's
22 Exhibit 2 for identification, as
23 of this date.) 10:47:39AM
24 Q. Ms. Gates, Exhibit 2 to your 10:47:39AM
25 deposition is a copy of the 10:47:44AM

1 ANH GATES
2 declaration that has been filed, that 10:47:46AM
3 you signed. I assume that's your 10:47:52AM
4 signature on page, I believe it's 3, 10:47:54AM
5 is it not? 10:47:56AM
6 A. Yes. 10:47:57AM
7 Q. And the various documents 10:47:57AM
8 that were attached to it has been a 10:48:01AM
9 copy that was filed with the court? 10:48:04AM
10 A. Yes. 10:48:06AM
11 Q. Now, first of all, in 10:48:06AM
12 paragraph 3 you mention Julie 10:48:14AM
13 Gonzales, who later changed her name 10:48:20AM
14 to Whitmore, negotiated an agreement 10:48:23AM
15 with Apollo. Have you had any 10:48:26AM
16 discussions with Ms. Gonzales or 10:48:29AM
17 Whitmore at any point since August of 10:48:32AM
18 '09? 10:48:38AM
19 A. No. 10:48:39AM
20 Q. Okay. When is the last time 10:48:39AM
21 you had any discussion with her? 10:48:42AM
22 A. I can't remember. 10:48:44AM
23 Q. What did she -- I mean, you 10:48:47AM
24 say in the first sentence in paragraph 10:48:54AM
25 3 that she negotiated an agreement 10:48:56AM

1 ANH GATES

2 with Apollo. What did she negotiate, 10:48:58AM

3 to the best of your recollection? 10:49:02AM

4 A. The best of my recollection, 10:49:03AM

5 she had negotiated the pricing with 10:49:07AM

6 Apollo, the fees. 10:49:09AM

7 Q. And by the fees, do you mean 10:49:13AM

8 the items that are reflected in 10:49:20AM

9 Schedule A of Exhibit 1? Exhibit 1 is 10:49:23AM

10 the contract we talked about a few 10:49:29AM

11 minutes ago. 10:49:32AM

12 A. Schedule A. 10:49:33AM

13 Q. Schedule C. 10:49:36AM

14 A. Schedule C. 10:49:37AM

15 Q. If I said A, I apologize. 10:49:39AM

16 A. Right, yes, Schedule C. 10:49:41AM

17 Q. So Ms. Whitmore was the one 10:49:42AM

18 that negotiated Schedule C? 10:49:47AM

19 A. Initially, yes. 10:49:48AM

20 Q. What role did you have, to 10:49:49AM

21 the best of your recollection, with 10:49:51AM

22 respect to Schedule C? 10:49:53AM

23 A. I remember getting presented 10:49:54AM

24 with pricing for Apollo for fees and 10:49:56AM

25 asking questions. I don't remember 10:50:03AM

1 ANH GATES
2 what questions I asked, but I asked 10:50:04AM
3 questions about what certain fees 10:50:07AM
4 meant or what we were paying for 10:50:09AM
5 hardware or software. My focus was 10:50:11AM
6 more on the technology, what we were 10:50:14AM
7 paying for software, why are we paying 10:50:17AM
8 software and hosting fees and 10:50:20AM
9 maintenance fees. And we had some 10:50:22AM
10 discussions around what this tier 10:50:27AM
11 pricing meant, but I don't recall 10:50:29AM
12 specifically. 10:50:31AM
13 Q. At this point, you don't 10:50:31AM
14 recall what those discussions were? 10:50:33AM
15 A. I don't. 10:50:35AM
16 Q. Okay. Now, in paragraph 3 10:50:35AM
17 of your declaration, I'm going back 10:50:38AM
18 now to Exhibit 2. I'm sorry. You say 10:50:40AM
19 that she had already negotiated the 10:50:44AM
20 pricing terms which we just talked 10:50:47AM
21 about and you negotiated the legal 10:50:49AM
22 terms. What did you mean by the legal 10:50:51AM
23 terms? 10:50:54AM
24 A. If you look at Exhibit 1, 10:50:54AM
25 the application service provider 10:50:58AM